

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.
RELATES TO: KRS 151B.190, 151B.200, 34 CFR Part 361, 29 USC 722
STATUTORY AUTHORITY: KRS 13B.170, 151B.195(1), 29 USC 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. 29 USC 722(c) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation services. Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner to promulgate administrative regulations for the department. This administrative regulation establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions.

- (1) "Applicant" means an individual who submits an application for vocational rehabilitation services.
- (2) "Commissioner" means the Commissioner of the Department of Vocational Rehabilitation.
- (3) "Department" means the Department of Vocational Rehabilitation and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.
- (4) "Eligible individual" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain or regain employment.

Section 2. Hearing Officer. (1) To conduct a hearing under this administrative regulation, a hearing officer shall not:

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- (a) Be an employee of a public agency, other than an administrative law judge, hearing examiner, or employee of an institution of higher education;
 - (b) Be a member of the Vocational Rehabilitation Council;
 - (c) Have been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; or
 - (d) Have personal or financial interest that would be in conflict with the objectivity of the individual.
- (2) To conduct a hearing under this administrative regulation, a hearing officer shall:
- (a) Have knowledge of the delivery of vocational rehabilitation services, the federal and state laws and the administrative regulations governing the provision of vocational rehabilitation services; and
 - (b) Have training with respect to the performance of official duties.

Section 3. Administrative Review.

- (1) An applicant or eligible individual may request an informal administrative review conducted by a department staff member from the director of program services or a designee.
- (2) The director or designee shall select an administrator from a district not involved in the action in question who shall conduct the administrative review within ten (10) days.
- (3) The administrator shall conduct the administrative review either in person or by teleconference.
- (4) The administrator shall make a determination and forward a copy to the individual and the department within five (5) days of the administrative review.
- (5) The applicant or eligible individual shall attend the administrative review and may be represented by an advocate or counsel.

Section 4. Mediation. (1) The department and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation.

(2) The department shall maintain a list of qualified mediators.

(3) The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

(4) A representative of the department who is authorized to bind the department to an agreement shall attend the mediation.

(5) The applicant or eligible individual shall attend the mediation and may be represented by an advocate or counsel.

(6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 5. Right of Appeal and Information. (1) An applicant or eligible individual may appeal to the Director of Program Services determinations made by the department affecting:

(a) Furnishing of vocational rehabilitation benefits; or

(b) Denial, reduction, suspension, or cessation of vocational rehabilitation services.

(2) An applicant or eligible individual shall:

(a) Be informed of the:

1. Entitlements available under this administrative regulation;

2. Right to appeal;

3. Right to be represented by an advocate or counsel; and

4. Names and addresses of department individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;
2. By telephone through direct contact with the Director of Program Services or a designee; or
3. On tape, except that a voice mail message shall not constitute a request for a hearing.

(3) The director of program services or a designee shall convene a hearing within sixty (60) days of a request made pursuant to subsection (1) of this section. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;
2. Fraud;
3. Collusion; or
4. Criminal conduct; or

(b) The applicant or eligible individual, or an authorized representative, requests this action.

Section 6. Client Assistance Program. The department shall advise an applicant or eligible individual of:

- (1) The existence of the Client Assistance Program, created by KRS 151B.225;
- (2) The services provided by the program; and
- (3) How to contact a program representative.

Section 7. Appeal Time and Hearing Procedures. (1) An applicant or eligible individual shall file an appeal:

(a) Within sixty (60) days of becoming aware, through the exercise of due diligence, of a department determination affecting the provision or denial of vocational rehabilitation services.

(b) By contacting the Director of Program Services.

(2) An applicant or eligible individual shall, at the time of requesting a hearing:

(a) Identify accommodations required; and

(b) Submit an issue statement for the hearing.

(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the department and Statewide Council for Vocational Rehabilitation.

Section 8. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Secretary of the Workforce Development Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension.

(2) Either party shall have twenty (20) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Workforce Development Cabinet.

(3) The Secretary of the Workforce Development Cabinet shall consider the record, including the recommended order and any timely exceptions filed to the recommended order.

(4) The Secretary of the Workforce Development Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions. (17 Ky.R. 779; Am. 1491; eff. 12-7-90; 21 Ky.R. 1953; 2702; eff. 5-4-95; 23 Ky.R. 3110; 3768; eff. 5-12-97; 26 Ky.R. 2030; 27 Ky.R. 114; eff. 7-17-2000; 28 Ky.R. 1210; 1634; eff. 1-14-2002.)